



Finance

Purchasing Division
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Wilmington, NC 28402-1810

910 341-7830
910 341-7842 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

June 20, 2016

**RE: Request for Proposal – Laboratory Information Management System (LIMS)
RFP No. S7-0616**

Dear Sir or Madame:

The City of Wilmington is seeking the services of a professional consultant to assess the Wilmington Police Department Crime Laboratory's [CL] software applications and workflow processes; and install and implement an integrated and comprehensive Laboratory Information Management System (LIMS).

This Request for Proposal (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for the preparation of the assessment and a strategic plan for the implementation of such an integrated system.

The RFP includes a preliminary scope of work as well as the terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the contractor. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a proposal shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

In order for your proposal to be considered responsive, it must adhere to the submittal requirements that follow. The successful Consultant will be selected based on the quality and best value of services provided for the available budget.

After the most qualified firm is determined by the City, the staff will enter into negotiations with the firm to better define the final scope of work. If for any reason the City and the selected firm cannot agree on a scope for the fee available, the City will enter into negotiations with the next most qualified firm..

It is the goal of the City to promote local and minority business participation in all service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the Consultant shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

Questions concerning the proposed contract terms and conditions should be addressed to my office.

I hope to receive your proposal for this work.

Sincerely,

Daryle L. Parker
Purchasing Manager

Enclosure

cc: Bethany Pridgen, Forensic Lab Director

INTRODUCTION

The Wilmington Police Department Crime Laboratory [CL] provides the full range of forensic services. It provides these services not only to the City of Wilmington Police Department, but also to other law enforcement agencies in the five surrounding Southeastern North Carolina counties: New Hanover, Brunswick, Duplin, Onslow and Pender. The total population of this service area in 2013 was almost 630,000 people.

The CL currently uses several systems and manual recordkeeping to document its processes. While there is some integration with these various ancillary systems, they are for the most part separate and distinct operations.

The goal of the CL is to expand, enhance and improve the quality, timeliness and scope of its forensic laboratory services. The City of Wilmington has been awarded a Federal grant to fund the implementation of a Laboratory Information Management System (LIMS). The LIMS will provide improved timeliness from receipt of requests to reporting, provide for quality assurance management in accordance with ISO 17025 standards for all disciplines and move toward a paperless laboratory to reduce time spent on administrative tasks which will reduce turnaround times and increase technical productivity. The CL desires to put in place a turn-key, modern, state-of-the-art Forensic Laboratory Information Management System (LIMS).

SCOPE OF SERVICES

The Consultant will assist the City of Wilmington in completing a system needs assessment, developing a plan of action to address the needs identified, and plan implementation. The specific tasks included within the scope of services are shown below:

Task #1: Evaluation of Current Systems and Needs Assessment

The first phase of this process is assessment. The Consultant will evaluate existing systems that no longer function adequately in meeting the needs of the CL. There are core functions in the CL that are based on manual processes which need to be addressed with technological solutions to help achieve greater efficiencies and provide better system integration.

The Consultant will conduct a series of on-site interviews with various departmental staff to fully assess the requirements for the existing systems, as well as, identifying opportunities for integrating data collected from departmental software. Consultant will develop a process to identify existing needs and to gather the satisfaction with the current systems.

The Consultant will determine the effectiveness of the existing software solutions and conduct process reviews in meeting the needs of the CL including the need for accurate and complete information, proper internal controls, and effective workflow processes.

Task #2: Proposed Plan of Action

The second phase will be to create a plan of action. The Consultant will submit a diagnostic report summarizing the enhancements and replacements that are recommended to the workflow processes in order to sustain and support the CL's growth and achieve its goals.

The Consultant will create a comprehensive plan of action to implement solutions to resolve the issues identified and satisfy the specification and requirements that follow. The plan of action should include a prioritization of solution requirements, the potential for phasing-in modular solutions, suggested timeframes for implementing the project, and estimated incremental costs for potential replacement options, including software and training.

Task #3: Implementation Plan

The third phase of this process is plan implementation after the final system design is selected. The Consultant will test software performance and train CL staff in the operation of the new system.

REQUIREMENTS

The City of Wilmington's Police Department Crime Laboratory has a need for an integrated electronic management system that functionally supports the following:

1. Standardizing the process of tracking cases and evidence within the department and the laboratory
2. Optimizing workflow across all disciplines by increasing the efficiency of receipt, processing and reporting
3. Maintaining the overall Quality Management System to ensure compliance under the ISO 17025:2005 - International accreditation program. Consultant must have a Quality Assurance module that supports the City of Wilmington Crime Lab's standards.

LIMS SPECIFICATIONS

1. Solution Overview:
 - a. Maintenance and support shall include access to upgrades/updates and patches.
 - b. LIMS shall support accreditation requirements.
 - c. LIMS shall support Data Integrity: Storage, Authentication, Password Policies and Storage, Audit Trail, and encryption.
 - d. LIMS shall have the ability to expand in the future (i.e. new units, analyses, workflows, etc.) without the vendor support. The vendor shall equip CL staff on how to configure the solution.
 - e. LIMS shall be comprehensive, meeting/exceeding our requirements.
 - f. The solution shall be implemented in a way that trains our CL staff and reflects CL processes with minimal customization.
2. Technology:
 - a. Must be true web-based environment that shall be able to run on Internet Explorer v 11.

- b. Platform independent (SQL or Oracle).
 - c. Shall include a designer mode that allows the end user to have access to code so that the system may be modified without the vendor.
 - d. Integrated yet independent Crime Scene and Property Management modules providing the ability to expand without purchasing additional modules.
 - e. Include an interfacing mechanism that is native to the LIMS.
3. The LIMS shall have an Integrated Quality Management:
- a. Ability to integrate our quality management system to Support ISO 17025:2005 compliance.
 - b. Ability to associate document(s) to accreditation standard and view a standard with the associated approved document(s). Must have the ability to assign one or more individual(s) responsible for a document(s).
 - c. Ability to document and monitor Corrective Action Reports, Preventative Action Reports, and incident logs.
 - d. Include re-certification points tracking (ABC, AFTE, IAI, etc.)
 - e. Ability to document training, certifications, education, and publications for each analyst.
 - f. Include a training and recertification application which is updated automatically when analysts pass competency, proficiency tests, and/or training activities. The ability to create in-house qualification examinations (competency or proficiency) and administer and track via the LIMS.
 - g. Document Management System to maintain approved, retired, and in progress/draft documents.
 - h. Ability to schedule and document Quality Audits within the LIMS.
 - i. Ability to document Lab Inspections (like safety checklists etc.).
 - j. Must include inventory/reagent and equipment modules and have the ability to identify what cases/samples were analyzed with the inventory and/or equipment which are linked to associated grants and cases.
 - k. Shall have the ability to document equipment maintenance and repair; identify individual(s) responsible for the piece of equipment, this person shall receive alerts when maintenance is due; and ability to associate equipment to a grant.
 - l. Ability to capture inventory/reagents information, send an alert based on a configurable defined low level, and know on what cases a reagent was used. Ability to define recipes with the materials needed, the recipe should automatically update based on the desired amount/volume.
 - m. The review process for analytical reports must be configurable.
 - n. Include Discovery and FOIA request management as well as Court testimony management and statistics
 - o. Include Technical and administrative review statistics.
 - p. Ability to conduct and document random vault audits.
 - q. Provide the ability to compile quality information into one report.
4. Administrative / General:
- a. Analytical reports must be generated in Microsoft Word and have a configurable template.
 - b. The LIMS shall be role-based controlling access to the system. LIMS administrators shall have the ability to add or edit roles.

- c. Real-time alert based system notifying the correct user of their workload and tasks.
 - d. Ability to identify high profile or sensitive cases and automatically limit case access.
 - e. Context sensitive help within the application.
 - f. Ability to generate NFLIS report.
 - g. Provide statistic reports on number of hits in various databases (CODIS, NIBIN, AFIS).
 - h. Ability to add/edit worksheets.
5. Central Receiving / General Case Management:
- a. Electronic Chain-of-Custody.
 - b. Utilize 1D and 2D barcodes.
 - c. Ability to pre-log cases.
6. Evidence Lifecycle:
- a. The LIMS shall provide the ability to manually or automatically assign cases.
 - b. The solution shall send alerts to analysts when cases have been assigned to them.
 - c. The LIMS shall be able to integrate instruments with data parsing.
 - d. The LIMS shall provide alerts/reminders for various tasks, including but not limited to: equipment maintenance; low level inventory; case assignment; case with a pending report; case ready for review; items ready for transfer; and examiner report pending delivery.
7. Workflow Highlights
- a. The LIMS shall include latent print comparison request orders.
 - b. The LIMS shall include an AFIS queue to organize impressions that need searched and the subsequent documentation of search results.
 - c. Shall include a latent prints workflow reflecting the ACE-V methodology recommended by Scientific Working Group on Friction Ridge Analysis, Study and Technology
 - d. The LIMS shall provide the ability to associate standard operating procedures to a workflow. Furthermore, the LIMS shall allow for required reagents and/or equipment to be associated with a workflow. As needed, the LIMS shall require documentation of checking QC samples prior to recording results.
 - e. The LIMS shall provide the ability to add, edit, and/or copy workflows without coding.

The action plan will document functional requirements, scope, cost, project plan and key deliverables. The report will be presented in a format and language that is “user-friendly.” Technical language should be kept in balance with common sense understanding. The judicious use of graphics and other devices that will enhance understanding of the proposal is encouraged.

The CL management will confer with the awardee to assure the requirements and specifications are satisfied within the limitations of the available budget. For planning purposes, the funding available for this turn-key system is \$165,000.00.

TIME FRAME

The proposal shall outline the proposer’s best estimate of time to complete each task with final completion of all tasks by September 30, 2016.

SUBMITTAL REQUIREMENTS

To be considered, six (6) hardcopies, including one unbound, of the proposal and one flash drive copy must be submitted to Daryle L. Parker, Purchasing Manager, P.O. Box 1810, 305 Chestnut Street, 5th Floor Wilmington, NC 28402 no later than 3:00 p.m., Friday July 8, 2016 in order for it to be considered. The City shall not be responsible for any expense incurred by the firm in preparing and submitting a proposal. All proposals submitted become the property of the City.

All proposals must be in a sealed envelope marked: REQUEST FOR PROPOSAL – LABORATORY INFORMATION MANAGEMENT SYSTEM (LIMS).

Prior to submittal of the RFP response, potential respondents should submit a letter of intent to Ellen.Mcgowan@wilmingtonnc.gov acknowledging receipt of the RFP and to inform the City of its intent to respond. The vendor should also provide the name, title, address, telephone, and email address/facsimile number of the individual who can address inquiries related to this RFP and the vendor's proposal, and receive clarification addenda from the City.

The proposal shall contain the following information:

1. A statement demonstrating your understanding of the project, and your assurances that the LIMS you propose satisfies the specifications required.
2. A brief description of the project team, identifying each key member with qualifications, and a designated lead team member who will be primarily responsible for critical presentations to CL staff and the Selection Committee.
3. A statement documenting your in-house Forensics Domain Expertise with dedicated resources.
4. A statement documenting your ISO 9001:2008 certification for the development, design, and implementation of a LIMS. **Consultant must be ISO 9001:2008 certified.**
5. A list of at least five (5) forensic/crime laboratory customers and a point of contact with contact information. These five (5) forensic/crime laboratories must have successfully implemented the bidder's Forensic LIMS within the last eighteen (18) months.
6. A sample of the proposed final format for the diagnostics report and recommended structure.
7. A detailed time line with deliverables associated with each task through completion of the project.
8. A detailed breakdown of the costs [including travel] the vendor's team intends to allocate to each task.
9. A breakdown of the estimate percentage of time each team member will devote to this project.
10. Any additional information you believe may distinguish your proposal from others.

COST PROPOSAL

The cost proposal shall provide a description of proposed fees and expenses your firm would charge to provide the services described in your response to this request. A breakdown of the proposed fees and expenses based on each of the identified three tasks is required using the attached document (Attachment A).

This cost proposal must remain open and valid for at least 90 days from the deadline specified for submission of proposals. In the event the award is not made within 90 days, the City will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer period of time.

COPYRIGHT RELEASE

Firms responding to this RFP shall supply a statement of copyright release to allow the City to make copies of any copyrighted materials submitted (for internal review only).

SELECTION PROCESS

Proposals will be evaluated on the basis of the written materials submitted. During the evaluation process, the City may, at its discretion, request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions the City may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

The City reserves the right to award the contract without written or oral discussions with proposers. The City reserves the right to reject any and all proposals and re-advertise the requirement, to waive irregularities in a proposal, and to award a contract based on the best interest or what is most advantageous to the City. The City of Wilmington shall have no obligation to award a contract for services as a result of this RFP.

SELECTION FACTORS & EVALUATION CRITERIA

Proposal Evaluation Criteria	Max Points
Proposal satisfies requirements	40
Completed work of similar size and scope	10
Qualifications and expertise of proposed	10
Approach and methodology	10
References of representative projects	10
Cost	20

The Forensic Lab Director will serve as the City's project manager and primary point of contact. A Selection Committee will assist the project manager in the review of all submitted proposals. The Proposal Evaluation Criteria above will be used in the selection process.

Questions concerning this RFP should be directed to the project manager. Questions may be submitted no later than one week prior to the final submission deadline. All questions and answers regarding the RFP may be shared with all consultants known to be interested in submitting a proposal.

Bethany Pridgen
Email: Bethany.pridgen@wilmingtonnc.gov
910-343-3600

INSTRUCTIONS TO BIDDERS

1. Marking of Bid Envelopes

Paper copies of bids must be contained in a sealed envelope. The envelope should be plainly marked showing the bid name, bid number, bid due date and time, and the bidder's name.

2. Late Bids Not Considered

Bids received after the stipulated bid due date and time will not be considered.

3. Compliance with Specifications

Your bid must be in compliance with the specifications. The City of Wilmington reserves the right to allow or disallow minor deviations from the specifications in order to purchase what is best for the City from a standpoint of quality, cost and service to be rendered.

4. Bid Corrections

All notations shall be written in ink or typed. Changes or corrections made on the bid form must be initialed by the individual signing the bid. No corrections will be permitted after the stipulated bid due date and time.

5. Withdrawal of Bids

Bids may be withdrawn at any time prior to the stipulated bid due date and time upon written or personal request of the bidder. Negligence on the part of the bidder shall not constitute a right to withdraw the bid subsequent to the stipulated bid due date and time.

6. Alternate Bids

Bids submitted as alternate which do not meet or exceed the minimum specifications shall be rejected except that minor deviations may be acceptable. The City shall be the sole judge of what is considered a minor deviation.

7. Rejection of Bids

The City reserves the right to reject any and all bids.

8. Award

(a) Award shall be made to the lowest responsible bidder that offers the best value taking into consideration cost, quality, performance, experience and the time specified in the proposals for the performance of the contract.

(b) A committee may review the proposals and select the firm whose offer represents the best value to the City. After the most qualified firm is determined by the City, the staff may enter into negotiations to better define the final scope of work. If for any reason, the City and the selected firm cannot finalize an agreement, the City will enter into negotiations with the firm that provides the next best value.

9. Addendums

(a) The City of Wilmington shall not be responsible for any oral instructions made by its employees or officers of the City in regards to the bidding instructions, specifications or contract documents.

(b) Any addenda for this Request for Proposal will be posted on the City website.

10. Responsibility for Compliance with Legal Requirements

The bidder's services and facilities shall be in full compliance with any and all applicable state, federal, local, environmental and safety laws, regulations, ordinances and standards or any standards adopted by nationally recognized testing facilities regardless of whether or not they are referred to in this invitation.

11. Taxes

(a) The City of Wilmington is NOT exempt from and will pay NC State taxes. Sales tax will not be a consideration in the award.

(b) The City of Wilmington is exempt from and will not pay federal taxes. An exemption certificate will be furnished upon request.

12. Terms and Conditions

(a) Terms and Conditions attached to the bid by the bidder and made a condition of award may render the bid non-responsive and may be rejected by the City of Wilmington.

(b) Terms and Conditions included herein are an integral part of the bid document and shall prevail unless changes or attachments are approved in writing by the City of Wilmington prior to the bid opening.

PROPOSERS CERTIFICATION FORM

I have carefully examined the Request for Proposal, and any other documents accompanying this Request for Proposal.

I hereby propose to furnish the services specified in the Request for Proposal. I agree that my proposal will remain firm a period of up to 60 days in order to allow the City of Wilmington adequate time to evaluate the proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer employee or agent of the City of Wilmington or any other proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

NAME OF FIRM

BY:

SIGNATURE

Sworn to and subscribed before me
this ____ day of _____, 2016

NAME & TITLE, TYPED OR PRINTED

Notary Public

MAILING ADDRESS

State of _____

My Commission Expires: _____

CITY, STATE, ZIP CODE

(____)_____
TELEPHONE NUMBER

(Notary Seal)

(____)_____
FAX NUMBER

CONTRACT NUMBER: S7-0616

STATE OF NORTH CAROLINA

PROFESSIONAL SERVICES AGREEMENT

COUNTY OF NEW HANOVER

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this ____ day of _____, 20____, by and between the City of Wilmington, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and _____, hereinafter referred to as the "CONSULTANT".

W I T N E S S E T H

WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:

NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

1. Term of Agreement. The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.
2. Consultant's Services. The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Proposal ("RFP") put forth by CITY and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFP, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference.
3. Compensation to Consultant. The CITY hereby agrees to pay to CONSULTANT the amount not to exceed _____ dollars (\$_____) for services as provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after receipt of an approved invoice.
4. Action of CITY in the Event of Breach of Contract. In the event that review of CONSULTANT'S performance shows non-conformance to any of the terms or conditions contained herein, the CONSULTANT shall be in breach of this Agreement and the CITY may take corrective action as it deems necessary, including, but not limited to, withholding or reducing any funds not yet paid to CONSULTANT.

5. Termination.

(a) CITY shall have the right to terminate this Agreement at any time and without cause by giving the other party thirty (30) days written notice of termination. In the event of termination, CONSULTANT agrees to refund to CITY all moneys that were made available to CONSULTANT under the provisions of this Agreement which CONSULTANT retains as of the effective date of termination. In addition, CONSULTANT shall provide CITY with a financial accounting, as required by CITY, for all funds received by CONSULTANT and on hand up to the date of termination.

(b) In the event that the CONSULTANT is in breach of this Agreement as detailed in Provision 4, the CITY shall have the right to terminate this Agreement for cause. In the event that the CITY terminates this agreement for cause, the CITY shall be entitled to repayment of any funds previously paid to CONSULTANT in accordance with the provisions of this Agreement.

6. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

7. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.

8. Independent Consultant. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

9. Indemnity. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to

all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

10. Representatives of the Parties. Sterling B. Cheatham, City Manager, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall be responsible for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Sterling B. Cheatham, City Manager
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402

_____ shall be the CONSULTANT's representative for this Agreement. Any notice required to the CONSULTANT under this Agreement shall be sufficient if mailed to the CONSULTANT by certified mail as indicated below:

11. Other Laws and Regulations. CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency

having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

12. Insurance Requirements.

A. Commercial General Liability

1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTS, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3. The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees.
4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
6. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of Wilmington.

B. Workers' Compensation and Employer's Liability

1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by

accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.

3. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of Wilmington.
4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

C. Business Auto Liability

1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
5. CONSULTANT waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

D. Professional Liability Insurance

1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$ 1,000,000.00 per claim.

2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

E. Deductibles and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of Wilmington is an insured under the policy.

F. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.
2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of Wilmington.

H. Evidence of Insurance

1. The CONSULTANT shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

J. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of Wilmington.
 3. The CONSULTANT shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
 4. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
 5. Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
 6. By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of Wilmington in this contract.
 7. The City of Wilmington shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.
13. No Presumption. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
14. Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
15. No Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
16. Conflict of Interest. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
17. Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

18. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

19. Reference. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.

20. Interpretation/Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

21. Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

22. Time. Time is of the essence in this Agreement and each and all of its provisions.

23. Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.

24. Non-Appropriation. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

25. Authority to Act/IDA Certification. Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the CONSULTANT is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONSULTANT has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONSULTANT is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the

requirements of the Iran Divestment Act and N.C.G.S. § 147, CONSULTANT shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

26. Non-Discrimination. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.

27. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

28. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.
2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

29. Debarment and Suspension. The CONSULTANT certifies that the CONSULTANT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by the CITY, the CONSULTANT shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the CONSULTANT for this Contract shall be incorporated into this Contract by reference.

30. Byrd Anti-Lobbying Amendment (To be submitted with each bid or offer exceeding \$100,000):

The CONSULTANT certifies by signing its offer, to the best of his or her knowledge, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

31. Clean Air Act and Federal Water Pollution Control Act. CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

CITY OF WILMINGTON

By: _____
Sterling B. Cheatham, City Manager

Approved as to Form:

William E. Wolak, City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This ____ day of _____, 20____.

Jennifer R. Maready, Finance Director

Project Number: _____ (if applicable)

Account Number: _____

Amount of Contract: _____

Requisition/PO Number: _____

Federal ID Number: 56-6000239

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public in said State and County, certify that Sterling B. Cheatham personally appeared before me this day and acknowledged that he is the City Manager of the City of Wilmington, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City of Wilmington, the foregoing instrument was signed in its named by him as its Manager.

WITNESS my hand and notarial seal, this the ____ day of _____, 2016.

[SEAL]

Notary Public

My Commission Expires: _____

CONSULTANT

By: _____
President/Vice President

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that
_____, personally came before me this day and
acknowledged that he (she) is President of _____, a
corporation, and that by authority duly given and as the act of the corporation, he(she) executed the
foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the ____ day of _____, 2016.

Notary Public

My Commission Expires:

[SEAL]

Attachment A

Proposal Response Form

Completed Proposal Cost _____

Breakdown of Proposal Costs and Estimated Hours per Task

<u>Task</u>	<u>Hours Budgeted</u>	<u>Costs</u>	<u>Time</u>
1.			
2.			
3.			

Complete Proposal Total Hours _____

Total Days _____

Should additional services be required, please submit a fee schedule and hourly consulting rates.